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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 727

CHARLES C. ORIOLO,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Charles C. Oriolo, in support of his petition for writ of certiorari to review the final judgment of the United States Circuit Court of Appeals for the Third Circuit, entered November 6, 1944, confirming his conviction for violation of the White Slave Traffic Act, on April 12, 1943, respectfully shows:

A

Summary Statement of the Matter Involved

Defendant was indicted November 16, 1942, for violation of the White Slave Traffic Act, commonly called the Mann

Act, being the Act of June 25, 1910; the applicable portions follow:

> "398: Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting in interstate commerce * * * any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; * * * shall be deemed guilty of a felony."
>
> "399: Any person who shall knowingly persuade, induce, entice or coerce * * * any woman or girl to go from one place to another in interstate or foreign commerce, * * * for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier in interstate commerce * * * shall be deemed guilty of a felony."

The alleged transportation in Interstate Commerce which took place July 20, 1942, consisted of a trip by railroad train from Atlantic City in the State of New Jersey to Philadelphia, in the State of Pennsylvania.

The facts, as agreed upon in the Statement filed in lieu of testimony, were that the defendant and one Elizabeth George, who testified on behalf of the Government, met in Philadelphia and that, after some preliminaries, defendant took the woman to the Clinton Hotel in Philadelphia, where he registered with her as man and wife under the name of De Marco on July 6, 1942. The woman worked for defend-

ant as a prostitute. On July 19, 1942, the couple undertook an automobile journey to Atlantic City for a day's outing. There they were arrested, and their automobile was held by the authorities. The couple took the train back to Philadelphia on July 20, 1942, and within about fifteen minutes from the time the return journey on the train commenced, and while the train was still in the State of New Jersey, defendant informed the woman that she would have to resume the business of prostitution in Philadelphia to enable him to pay the $500.00 fine that had been imposed in Atlantic City. Upon their arrival into Philadelphia, the woman worked for the defendant as a prostitute and turned over her earnings to him.

At the conclusion of the government's case, defendant entered a demurrer which was overruled, and on April 12, 1943, defendant was sentenced to undergo imprisonment for a term of three years. Defendant has been at liberty pending determination of his appeal to the Circuit Court of Appeals for the Third Circuit in the sum of $5,000.00.

The Circuit Court of Appeals, October Term, 1943, No. 8514, sustained the conviction, Biggs, Circuit Judge, dissenting.

B

Statement of the Jurisdiction of This Court

1. Statutory Provision Believed to Sustain the Jurisdiction.

The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code, as amended by the act of February 13, 1925, c. 229, Par. 1, 43 Stat. 938 [U. S. C. A. Title 28, Par. 347, (a)] and under the same act, ch. 229, Par. 8, 24 Stat. 940 (U. S. C. A., Title 28, Par. 350).

2. The Date of the Judgment to be Reviewed.

The judgment of the Circuit Court of Appeals for the Third Circuit, affirming the conviction of petitioner, was

entered on November 6, 1944. This petition, with supporting brief, and the certified record, are filed within thirty days next after final judgment.

3. Statement of the nature of the case and the rulings of the Circuit Court of Appeals Bringing the Case within the Jurisdiction of this Court.

The nature of the case, conviction under the White Slave Traffic Act, has been heretofore stated.

The Circuit Court of Appeals ruled that although the facts are "almost strikingly similar" to the facts in the case of *Mortensen* v. *United States*, 322 U. S. 369, the instant case could be distinguished. That this ruling of the Circuit Court of Appeals is in conflict with the decision of this Court in *Mortensen* v. *United States* is discussed more fully hereafter in connection with petitioner's reasons for the allowance of the writ of certiorari, and in Petitioner's Brief in support of this petition.

4. Cases believed to sustain the jurisdiction of this Court. *Mortensen* v. *United States*, 322 U. S. 369.

C

The Question Presented

1. Did the remark of petitioner, made to the woman involved, after the commencement of the return trip of a projected innocent vacation trip from Philadelphia, Pennsylvania, for a day's outing in Atlantic City, New Jersey, and back to Philadelphia, that the woman should go back to work as a prostitute at the hotel, and should earn money for petitioner to pay a fine which had been imposed upon him in Atlantic City, show that a change had occurred in the purpose of the trip to Philadelphia which distinguished it from being merely the return of the vacation trip, the

words having been spoken while the parties were yet in the State of New Jersey?

2. Should the conviction below be reversed, and petitioner be discharged?

D

Reasons Relied On for Allowance of the Writ.

1. In ruling that the actions of petitioner constituted a violation of the White Slave Traffic Act, the Circuit Court of Appeals for the Third Circuit decided a federal question in a way probably in conflict with applicable decisions of this Court; in particular, the decision in *Mortensen* v. *United States*, 322 U. S. 369.

2. The matter is of the gravest importance, defendant having been sentenced to undergo imprisonment for a term of three years.

Wherefore your petitioner prays that a Writ of Certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Third Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court had in the case numbered and entitled on its docket No. 8514, October Term, 1943, *United States of America, Appellee*, v. *Charles C. Oriolo, alias Charles Martini, alias John Martin, Appellant*, to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States, and that the judgment herein of the said Circuit Court may be reversed by this Court, and for such further relief as to this Court may seem proper.

Respectfully submitted,

THOMAS D. MCBRIDE,
LOUIS F. MCCABE
Attorneys for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 727

CHARLES C. ORIOLO,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinions of Courts Below

The Opinion of the District Court of the United States for the Eastern District of Pennsylvania, Kalodner, J., is reported at 49 Fed. Supp. 226.

The Opinion of the Circuit Court of Appeals for the Third Circuit has not yet been reported. A copy thereof appears in the Record.

Jurisdiction

The Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, Section 347, Title 28, U. S. C. A.

Statement of the Case

A complete statement of the case having been made in the Petition for Writ of Certiorari, it would serve no useful purpose to restate the case here.

Specifications of Error

1. The Circuit Court of Appeals for the Third Circuit erred in holding that the act of petitioner in transporting from Philadelphia, Pennsylvania, to Atlantic City, New Jersey, and back to Philadelphia, a prostitute who had been working for petitioner in Philadelphia, and who resumed her work there after her return, constituted a violation of the White Slave Traffic Act, as to the return trip alone.

Argument

It is contended that there are no facts in this case which distinguish it from *Mortensen* v. *United States*, 322 U. S. 369.

It is conceded in the majority opinion of the Circuit Court that the petitioner set out with the woman involved from Philadelphia, Pennsylvania, to Atlantic City, New Jersey, for an innocent day's outing. There was no breaking off of her occupation as prostitute. Had the planned trip been completed on the same evening, the case would admittedly have fallen within the decision of the *Mortensen* case, in which Mr. Justice Murphy said:

> "It may be assumed that petitioners anticipated that the two girls would resume their activities as prostitutes upon their return to Grand Island. But we do not think it is fair or permissible under the evidence adduced to infer that this interstate vacation trip, or any part of it, was undertaken by petitioners for the purpose of, or as a means of effecting or facilitating, such activities. The sole purpose of the journey from

beginning to end was to provide innocent recreation and a holiday for petitioners and the two girls. It was a complete break or interlude in the operation of petitioners' house of ill fame and was entirely disassociated therefrom. There was no evidence that any immoral acts occurred on the journey or that petitioners forced the girls against their will to return to Grand Island for immoral purposes. * * *

* * * The return journey under the circumstances of this case cannot be considered apart from its integral relation with the innocent round trip as a whole. There is no evidence of any change in the purpose of the trip during its course. If innocent when it began it remained so until it ended. Guilt or innocence does not turn merely on the direction of travel during part of a trip not undertaken for immoral ends. If the return journey was illegal, so was the outgoing one since all intended, from the beginning, to end the journey where it began, at Grand Island. The outward leg of the trip was interstate transportation. Yet it was not charged, and could not well be, that proof of this part of the trip was a violation of the Act. It differed in no respect from the other part, except in the direction of travel. That is not enough to make the first part innocent, the last part illegal. Criminal intent and purpose must be grounded on something less ingenious than that which is necessary to sustain a finding of such a purpose in making the return interstate journey to Grand Island."

In distinguishing the *Mortensen* case, the Circuit Court said: "There is one significant fact which, in our opinion, distinguishes the present case from the *Mortensen* case and presents evidence sufficient to sustain the conviction. That evidence consists in the fact that defendant was arrested and fined in New Jersey and HIS STATEMENT TO THE WOMAN THAT SHE WOULD HAVE TO RETURN TO PHILADELPHIA AND RESUME THE BUSI-

NESS OF PROSTITUTION TO ENABLE HIM TO PAY HIS FINE." (Emphasis supplied.)

The court was in error in its statement of the facts. The court added the words TO PHILADELPHIA. This phrase did not appear in the testimony nor in the agreed statement of facts. Judge Biggs, dissenting, appends in a footnote, the testimony in question, "* * * we were in Atlantic City on the train about fifteen minutes and he (the defendant) said he needed * * * money to come back and get his car. * * * He told me I should go back to work as a prostitute in the * * * Hotel, and I should earn the money for him so he could go back and pay his fine to get his car."

The majority opinion entirely overlooks the vital point that the return trip was already well under way when this remark was made. The woman had been arrested with petitioner (not, it should be noted, for any actions in connection with her profession, but simply because she was with petitioner who was *persona non grata* to the police authorities of Atlantic City): obviously she knew of the need for money. The remark of petitioner related not at all to any purpose or change of purpose in the return trip, but rather to the desirability or need of recovering the car. Petitioner did not, as the majority mistakenly declared, say she should return to Philadelphia, which would indeed have been a slender thread on which to hang an opinion, but would at least have related to the interstate feature of the trip. His statement referred only to the hotel. It did not mention Philadelphia, or make any reference to the return to Philadelphia. The precise words are appended to the disenting opinion in a footnote. The purpose of the return to Philadelphia had never varied. The need for money for a fine may possibly have added some basis for concern, but it did not even hasten the return

to Philadelphia, which had been planned for the same day as the trip to Atlantic City.

The majority opinion says: "In the case at bar there was evidence of a change of purpose of the trip during its course. The seizure of defendant's automobile and the fine imposed upon him supply the motive for the formation of a new intent on his part in transporting the woman to Pennsylvania, and his statement to her as to this intent was sufficient to demonstrate that a change had occurred in the purpose of the trip to Philadelphia which distinguished it from being merely the return of the vacation trip."

It is submitted that this is simply torturing the ordinary meaning of words for the purpose of preventing an undesirable person from going unpunished. There is not any evidence of change of purpose to meet the burden of overcoming the presumption of innocence, and proving petitioner's guilt beyond a reasonable doubt.

The dissenting opinion of Circuit Judge Biggs correctly characterizes the alleged evidence relied upon by the majority: "If there be evidence of a change in the purpose the change is too trivial to support the defendant's conviction in the light of *Mortensen* v. *United States*, 322 U. S. 369."

Conclusion

We urge that for the reasons stated herein, the Writ of Certiorari should be granted.

Respectfully submitted,

THOMAS D. MCBRIDE,
LOUIS F. MCCABE,
Attorneys for Petitioner.

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 727

CHARLES C. ORIOLO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES

On April 12, 1943, petitioner was convicted in the United States District Court for the Eastern District of Pennsylvania on an indictment charging that he transported one Elizabeth George from Atlantic City, N. J., to Philadelphia, Pa., for the purpose of prostitution and debauchery, in violation of the Mann Act (18 U. S. C. 398, 399). He was sentenced to imprisonment for a term of three years. (App. 5a–10a, 11a.)[1] The evidence is

[1] The record filed with the petition for a writ of certiorari consists of the appendix to petitioner's brief in the circuit court of appeals, and for convenience we shall use the designation "App." in referring to this document.

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summarized in an agreed statement of facts upon which the appeal was heard and decided by the Circuit Court of Appeals for the Third Circuit, as follows (App. 2a):

> The testimony was to the effect that the defendant and one Elizabeth George, who testified on behalf of the Government, met in Philadelphia and that, after some preliminaries, defendant took the woman to the Clinton Hotel in Philadelphia, where he registered with her as man and wife under the name of De Marco on July 6, 1942. The woman worked for defendant as a prostitute. On July 19, 1942, the couple undertook an automobile journey to Atlantic City for a day's outing. There they were arrested, and their automobile was held by the authorities. The couple took the train back to Philadelphia on July 20, 1942, and within about fifteen minutes from the time the return journey on the train commenced, and while the train was still in the State of New Jersey, defendant informed the woman that she would have to resume the business of prostitution in Philadelphia to enable him to pay the $500.00 fine that had been imposed at Atlantic City. Upon their arrival into Philadelphia, the woman worked for the defendant as a prostitute and turned over her earnings to him.

After the case had been argued in the circuit court of appeals, but before it was decided (see

App. 13–14), this Court rendered its opinion in *Mortensen* v. *United States*, 322 U. S. 369. Thereafter the court below filed its decision affirming the judgment of the district court; one judge dissented (App. 14–18, 19). The sole question with which the court dealt was whether this case is distinguishable from the *Mortensen* case. The majority opinion by District Judge Bard, and concurred in by Circuit Judge Jones, found the following distinction (App. 17):

> There is one significant fact which, in our opinion, distinguishes the present case from the *Mortensen* case and presents sufficient evidence to sustain the conviction. That evidence consists of the fact that defendant was arrested and fined in New Jersey and his statement to the woman that she would have to return to Philadelphia and resume the business of prostitution to enable him to pay the fine. As will be noted from the excerpt from the majority opinion of the Supreme Court above quoted, much stress was laid on the fact that: "The sole purpose of the journey from beginning to end was to provide innocent recreation and a holiday for petitioners and the two girls. * * * There is no evidence of any change in the purpose of the trip during its course. If innocent when it began it remained so until it ended."
>
> In the case at bar there was evidence of a change in the purpose of the trip during

> its course. The seizure of defendant's automobile and the fine imposed upon him supply the motive for the formation of a new intent on his part in transporting the woman to Pennsylvania and his statement to her as to this intent was sufficient to demonstrate that a change had occurred in the purpose of the trip to Philadelphia which distinguished it from being merely the return of the vacation trip.

Circuit Judge Biggs, dissenting, concluded (App. 18) that

> When the defendant took the woman on a day's outing to Atlantic City he intended to transport her at the end of the day from Atlantic City to Philadelphia so that she might resume work as a prostitute for his pecuniary profit. The change in purpose, and hence in intent, on which the majority rely, rests on the insubstantial difference between transporting the woman to Philadelphia to earn money to aid the defendant to recover his car as distinguished from transporting her (as he had intended originally) to earn money for him. If there be evidence of a change in purpose the change is too trivial to support the defendant's conviction in the light of *Mortensen* v. *United States,* 322 U. S. 369.

The sole ground urged by petitioner in his petition for a writ of certiorari (Pet. 8–11) is that the circuit court of appeals was mistaken in deciding that this case is distinguishable from the

Mortensen case. The issue is fully presented by the majority and dissenting opinions in the court below.

We respectfully suggest that the case be disposed of in this Court without further briefs or argument. If the Court feels that the distinction relied upon by the majority below is sound, as we think it is, it would seem that the case may be adequately disposed of by a denial of the petition for a writ of certiorari. On the other hand, if the Court should be of the view that the case is indistinguishable from the *Mortensen* case, it is respectfully suggested that an appropriate disposition would be to grant the writ and reverse the judgment below without additional briefs or argument. Cf. *Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees et al.* v. *United Transport Service Employees et al.*, 320 U. S. 715.

Respectfully submitted,

CHARLES FAHY,
Solicitor General.
TOM C. CLARK,
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Attorneys.

FEBRUARY 1945.

U. S. GOVERNMENT PRINTING OFFICE: 1945

No. 727. ORIOLO *v.* UNITED STATES. On petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit. February 26, 1945. *Per Curiam:* The petition for writ of certiorari is granted and the judgment is reversed. *Mortensen* v. *United States,* 322 U. S. 369. The

CHIEF JUSTICE, MR. JUSTICE DOUGLAS, and MR. JUSTICE JACKSON think that the judgment should be affirmed, the Mortensen case being inapplicable for the reasons stated in the opinion of the court below. *Mr. Thomas D. McBride* for petitioner. *Solicitor General Fahy, Assistant Attorney General Tom C. Clark, Messrs. Robert S. Erdahl* and *Irving S. Shapiro* for the United States. Reported below: 146 F. 2d 152.